IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition NO. 254 (ss) of 2003

Kunwar Singh Bist,
S/o late Sri Chandra Singh Bist,
R/o Bhainga Patti Raika Post Office Okhala Khal,
District Tehri Garhwal. .....Petitioner.

Versus

1. Zila Bhasaj Evam Sahakari Vikas Sang Limited, Muni-ki-Reti Tehri Garhwla through its Secretary.
2. Chairman, Zila Bhasaj Evam Sahakari Vikas Sangh Ltd., Muni-ki-Reti, Tehri Garhwal.
3. District Assistant Registrar Cooperative Societies, Narendra Nagar, District Tehri Garhwal.
4. Registrar Cooperative Societies Narendra Nagar, District Tehri Garhwal. .....Respondent.

Sri P.C. Jingan, Advocate for the petitioner.
Learned Standing Counsel for the respondents no .3 and 4.

Dated: 02.03.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of mandamus commanding the respondents no.1 and 2 to reinstate the petitioner in service as Sales Man with full back wages and continuity of service.

Brief facts giving rise to the present writ petition are that the petitioner was engaged on daily wage basis as Night Chaukidar in the Turpentine Factory of the respondent no. 1 situated at Muni-ki-Reti, District Tehri Garhwal at the rate of Rs. 20/- per day on 26.02.1989. Thereafter the petitioner was

given regular appointment on the post of Night Chaukidar on 09.08.1989. The petitioner was promoted to the post of Assistant Sales Man w.e.f. 01.09.1991. The petitioner was further promoted to the post of Sales Man in the pay scale of Rs. 950-1500/-w.e.f. 01.05.1995.

Petitioner has submitted that the respondent no.1 issued letters of appointment for a period of 89 days, but actually the services of the petitioner has never discontinued even for a single day and he continued to serve without any break since 09.08.1989 when he was made a regular Chaudikar.

The respondent no. 1 vide his letter dated 1103-14/Stha Vya. Pa/99-2000 dated 06.03.2000 directed that eight employees including the petitioner which was shown at Serial No.4 would not be permitted to continue after expiry of 89 days from 26.01.2000 to 23.04.2000 and their services would be deemed to be terminated from the next dated ending on 23.04.2000.

Aggrieved by the said order, the petitioner vide his representation dated 27.12.2001 submitted that he had continuously been working from the last 12 to 13 years but due to deemed termination of service of the petitioner and other employees, he has become totally helpless and he had handed over the entire charge to the concerned authorities and he had no other alternative to maintain his family and therefore, he requested to give the shop of the respondent no. 1 on rent so that he may earn for the maintenance of his family on the conditions laid down by the respondent no.1. The conditions are quoted below:-

"1– संघ की बकाया धनराशि मु0 17,156.78 संघ से जमा करें।

2– दुकान का अनुबन्ध करने से पूर्व 10,000/– बतौर जमानत को संघ में जमा करें।

3– संघ दुकान को किराया 1000/– {एक हजार रूपये} प्रतिमाह होगा जो कि एक वर्ष के लिये होगा।

अतः उपरोक्त शर्तानुसार शर्त पूरी करने पर ही दुकान किराये पर दिये जाने का अनुबन्ध किया जाना सम्भव होगा।

Thereafter, again on 26.12.2001, the petitioner made a representation to the District Magistrate Tehri Garhwal requesting him for allotment of shop of respondent no.1 in the name of the petitioner and for payment of his salary from March, 2000 onwards.

The respondent no. 1 vide its letter No. Vasuli/Kunwar Sngh Vikreta dated 29.01.2002 directed the petitioner to deposit Rs. 17,156.78 dues pending against the petitioner and before entering into the contracted shop of the respondent no. 1, he had to deposit Rs. 10,000/- as security to the respondent no. 1, the rate of rent of the shop was fixed to be Rs. 1,000/- per month and the shop was to be given on rent for a period of one year. It was clarified that if the above conditions are not fulfilled, then only the contract for giving shop to the petitioner would be feasible.

In pursuance of the above said letter, the petitioner deposited the dues of Rs. 17156.78 by a Bank Draft No. 2285 dated 20.07.2002 of District Cooperative Bank New Tehri, but respondent no. 1 did not take any action towards the allotment of the shop at New Tehri.

Thereafter, the petitioner preferred a representation dated 31.07.2002 before the Registrar Cooperative Societies of the Uttaranchal Dehradun with the contentions that he was illegally terminated from service rendering the family of the petitioner to the stage of starvation without any notice requesting him to reinstate in service and for payment of his arrears of salary from March, 2000 onwards.

Learned counsel for the petitioner has submitted that the conduct of the respondents in terminating the long service of

the petitioner without giving him one month's notice was unfair and illegal and retrenchment compensation in terms of Section 6-N of the U.p. Industrial Disputes Act, 1947, which is para material to Section 5-F of Industrial Disputes Act, 1947.

Learned counsel for the petitioner has further submitted that the retrenchment of the petitioner without compliance of conditions precedent to retrench is void-ab-initio and the petitioner becomes entitled for being reinstated with full back wages as held by several judgments of the Hon'ble Supreme Court of India and other High Court.

A counter affidavit has been filed, where in paragraph 5, 6, 7,8,10 and 11 are quoted below:-

"5. That the contents of para no.3 is incorrect and hence denied. In reply to it, it is to be stated that the petitioner was appointed on temporary basis only for the period of 89 days vide letter no. 463-67/Stha/app. 89-90 dated 9-08-1989 on the post of night chaukidar and therefore such appointment can not e said as regular appointment.

6. That the contents of para no. 4 is not correct hence denied in reply to it, it is sto be stated that that the petitioner was not given any promotion on the post of Assistant Sales Man but was only given the pay scale of the said post and the direction was given to the petitioner that he will perform the duty of Night Chaukidar vide letter no. 11012-15/dya Pa./91-92 dated 19-09-1991 which is Annexure No.2 to the writ petition.

7. That the contents of para no. 5 is not admitted hence denied in reply to it, it is to be stated that on the aforesaid dated the petitioner was not given any promotion but was given the salary admissible to others regular employees only for temporary period.

8. That the contents of para no. 6 is not admitted hence denied in reply to it, it is to be stated that time to time

when required the petitioner was given the work for the period of 89 days on temporary basis. More over petitioner never worked continuously more than 89 days in a year.

10. That the content of para no. 8 is not admitted and hence d3enied in reply to it, it is to be state that petitioner has not handed over the charge since dated 23.04.2000 to 21.12.2000 after termination of his service to the concerned authority but the charge was taken forcibly from the petitioner in presence of the Magistrate on 21.12.2000 and thereafter, it came to know that the amount of Rs. 34115.55 was embezzled and the remaining stock was also destroyed which result to a great loss to the societies and therefore, the representation of the petitioner was not considered.

11. That from 23.04.2000 onwards the petitioner service deemed terminated and he was out of job and therefore, no question for payment of the salary from 23.04.2000 onwards is due before the societies and moreover District Magistrate has no jurisdiction regarding the allotment of shop of the societies to the petitioner."

In ***State of Haryana Vs. Pyara Singh, AIR 1992 SC 2130,*** it has been held as under:-

"So far as the work charged employees and casual labour are concerned, the effort must be to regularize them as far as possible and as early as possible subject to their fulfilling the qualification, if any, prescribed for the post and subject also to availability of work. If a casual labour is continued for a fairly long spell-say two or three years- a presumption may arise that there is regular need for his services. In such situation it becomes obligatory for the concerned authority to examine the feasibility of his regularization. While doing so the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by

this Court security of tenure is necessary for an employee to give his best to the job."

In ***Writ Petition No. 91 of (S/S) of 2003 Bhaguli Devi Vs. State of Uttaranchal and others,*** similar controversy arose, where the employee concerned has worked on daily-wage for about 16 years and this Court has held as under:-

"For the reasons recorded above, since the petitioners' husband was continuing in employment for more that 16 years, petitioner is entitled 5to get benefit of the Uttar Pradesh Recruitment of Dependants of Government Servants Rule 1974, which has been adopted by the State of Uttaranchal.

In view of the above discussion, I direct the respondents Authorities to consider the claim of the Petitioner for providing her appointment under Uttar Pradesh Recruitment of Dependants of Government Servants Rules 1974 within a period of six weeks from the date of production of certified copy of this order.".

In view of the aforesaid facts, the writ petition is allowed. The respondents no. 1 and 2 are directed to pass appropriate order on the representation of the petitioner reinstating the petitioner and pay him full wages due to him.

No order as to costs.

(Rajesh Tandon, J.)

02.03.2006
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